

Exhibit 3: Settlement Agreement and Mutual Release

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. PARTIES:

The parties to this Settlement Agreement and Mutual Release ("Agreement") are: David Geffen (hereinafter "Geffen") and the California Coastal Commission ("Coastal Commission"), State Coastal Conservancy ("Coastal Conservancy"), Peter Douglas, Sam Schuchat and Access for All (collectively "Respondents" unless referred to individually).

2. RECITALS:

This Agreement is made with reference to:

(a) The petition/complaint filed by Geffen on July 3, 2002, in the Los Angeles Superior Court, Case Number BC277034 ("Main Action");

(b) The cross-complaint filed by the Coastal Commission on October 28, 2004, in the same litigation ("Coastal Commission Cross-Action");

(c) Geffen's cross-complaint filed on March 25, 2005, in response to the Coastal Commission's cross-complaint ("Geffen Cross-Action");

(d) The following subject property: APN Nos. 4451-006-31 and 4451-006-32 (22126-22132 Pacific Coast Highway); APN No. 4451-006-33 (22114 Pacific Coast Highway); and APN No. 4451-005-06 (22108 Pacific Coast Highway) (collectively "Property"); and

(e) The vertical and lateral access easements that Geffen was required to dedicate pursuant to conditions of coastal development permits issued in 1983, 1991 and 2000 with respect to the subject property and which are designated by the following numbers: 5-83-703 ("1983 permit"); 5-91-610 ("1991 permit"); and 4-99-268 ("2000 permit"), and the accessways thereby established.

3. CONSIDERATION AND AGREEMENT:

In consideration for the respective and mutually conditional promises set forth in this Agreement, the parties agree as follows:

3.1 The Agreement shall be effective only if executed by all parties on or before January 31, 2006.

3.2 By signing of this Agreement, Geffen represents and assures as follows:

(a) Within twenty (20) days of the full execution of this Agreement, Geffen shall submit to the Coastal Commission one complete after-the-fact permit

application ("Application") for the development currently in place on the subject property that is described generally in the letter dated July 19, 2005, from the City of Malibu to Lynn Heacox of the Land & Water Company a copy of which is attached to this Agreement as Exhibit A ("Improvements"). The Application shall also include a request for after-the-fact approval of the deck that rests upon the approved bulkhead but that the Coastal Commission staff has determined encroaches into one or more of the subject lateral access easements. Geffen shall not include any other proposed development in the Application, except with advance permission of the Coastal Commission staff. Geffen and Coastal Commission staff shall cooperate to assure that the Application addresses each item of existing development. To support approval of the Application, Geffen shall offer the following as part of the proposed development:

(1) Geffen shall record an Offer to Dedicate a lateral easement for public access and passive recreation extending from the mean high tide line to the toe of his seawall/bulkhead (excluding a ten foot privacy buffer adjacent to the seaward line of the seawall/bulkhead consistent with the existing privacy buffer) and providing an uninterrupted public access easement which connects the existing vertical accessway and the two closest existing lateral accessways on the subject property. Geffen will place trash receptacle(s) in the existing vertical accessway which will be taken to the curb by Geffen's employee or agent on trash collection day; and

(2) Geffen shall pay to the Coastal Conservancy the sum of one hundred twenty-five thousand dollars (\$125,000.00) to be deposited in a separate account within the Coastal Trust Fund established pursuant to section 31012 of the Public Resources Code and used for the purpose of providing funds to pay for the daily opening and closing of the gates and related maintenance of the subject accessways. The Coastal Conservancy may disburse funds from the Coastal Trust Fund account to Access for All to contract with ADT, or other comparable business entity, or person to provide services to Access for All (or successor) in its management of the subject accessways, including but not limited to opening and closing the gate, trash pickup and security services. Upon transfer of the subject property to a party other than Geffen, or upon Geffen's death, whichever occurs first, and notice thereof to Access for All (or successor) and the Coastal Conservancy, Access for All (or successor) in consultation with the Coastal Conservancy shall have the option for the next twelve (12) months to utilize funds in the Coastal Trust Fund account to replace the existing gates with gates that provide visual access to the coast and include a timed mechanism for automatically unlocking at sunrise and locking at sunset. Upon installation and payment in full for gates including both of these features, any balance of funds remaining in the account shall be returned to Geffen or to his estate.

(b) The parties do not in any way intend this Agreement to require that the Coastal Commission grant or otherwise take certain action on the Application. The Coastal Commission retains full discretion as allowed by law to grant, condition or deny the Application after full public hearing. The parties acknowledge and in no manner seek to limit any protections and immunities granted by law for any injuries to third parties who utilize any of the accessways including in particular those protections and immunities granted by California Code of Civil Procedure sections 846 and 846.1. If the Coastal Commission grants an after-the-fact permit that Geffen accepts, Geffen shall comply with such permit and pay Respondents their attorneys' fees and costs in the amount of three hundred ten thousand dollars (\$310,000.00) as follows:

(1) Geffen shall pay to Access for All the amount of eighty-five thousand dollars (\$85,000.00). Payment shall be made not later than seventy (70) days after the Coastal Commission's final action on the permit application, by means of a single payment made payable to "ACCESS FOR ALL." The payment shall be made by delivery of a certified check to counsel for Access for All; and

(2) Geffen shall pay to the Coastal Commission and Coastal Conservancy the amount of two hundred twenty-five thousand dollars (\$225,000.00). Payment shall be made not later than seventy (70) days after the Coastal Commission's final action on the permit application, by means of a single payment made payable to the "CALIFORNIA DEPARTMENT OF JUSTICE." The payment shall be made by delivery of a certified check to counsel for the Coastal Commission and Coastal Conservancy. The California Department of Justice shall be responsible for allocating the payment.

(c) Geffen has already provided the key to the gates at the vertical accessway to Access for All to allow public access to the beach pursuant to the 1983 permit; Geffen shall not seek a return of the key, change the locks or otherwise impede public use of the vertical accessway.

3.3 After Geffen accepts the after-the-fact permit, complies with all prior-to-issuance conditions of such permit, and complies with paragraph 3.2 of this Agreement, the Coastal Commission shall dismiss with prejudice its cross-complaint within ten (10) days of compliance as delineated in this sentence. If Geffen accepts the after-the-fact permit, Geffen shall comply with all prior-to-issuance conditions within ninety (90) days after Coastal Commission approval of such permit.

3.4 If the Coastal Commission denies the requested after-the-fact permit or if Geffen rejects the after-the-fact permit issued by the Coastal Commission, the Coastal

Commission shall not dismiss its cross-complaint and the parties shall return to litigation of the cross-complaint. In such event, this Agreement shall be rendered null and void.

3.5 If the Coastal Commission approves the requested after-the-fact permit and that approval is challenged in court by a third party, the Coastal Commission shall not dismiss its cross-complaint and the monies previously paid by Geffen pursuant to paragraph 3.2(b) of this Agreement shall be refunded to Geffen within thirty (30) days of the service of the lawsuit on the Coastal Commission. During the pendency of such a challenge, the parties to this Agreement shall stipulate to a stay of the Coastal Commission's cross-complaint or a dismissal without prejudice. During the pendency of such a challenge, Geffen shall comply with all terms and conditions of the after-the-fact permit unless a court of competent jurisdiction issues an order prohibiting or otherwise modifying such compliance. If the challenge to the after-the-fact permit is successful and results in a final Coastal Commission action denying a coastal development permit for the Improvements, this Agreement shall be rendered null and void. If this Agreement is rendered null and void, the monies paid by Geffen pursuant to the after-the-fact permit conditions shall be refunded to Geffen within thirty (30) days less any amounts used by Access for All consistent with the after-the-fact permit. If the challenge to the after-the-fact permit results in a final judgment or settlement upholding the permit, the Coastal Commission shall within ten (10) days dismiss its cross-complaint and Geffen shall concurrently make all payments required by this Agreement.

4. MUTUAL RELEASE OF CLAIMS:

For and in consideration of the above terms, the parties agree as follows:

4.1 Geffen for himself and his employees and agents, fully and forever releases Respondents, their officers, employees, governing members, agents and attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly relate to any claims, facts or circumstances arising out of or alleged in the Main Action, the Coastal Commission Cross-Action and the Geffen Cross-Action or any amended versions thereof.

4.2 Respondents for themselves and their officers, governing members, employees and agents, fully and forever release Geffen, his agents and/or attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly related to any claims, facts or circumstances arising out of or alleged in the Main Action, the Coastal Commission Cross-Action and the Geffen Cross-Action or any amended versions thereof subject to paragraph 4.3 below.

4.3 The parties do not waive their respective rights and interests to any future enforcement of the California Coastal Act of 1976, Public Resources Code section 30000

et seq. ("Coastal Act") or of terms and conditions of the public access easements with respect to the subject property relating to acts or conditions that occur after the execution of this Agreement.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT:

5.1 Geffen and Respondents stipulate, covenant and agree that the Agreement shall be enforceable by any judge of the Superior Court of the County of Los Angeles as if the Agreement is a judgment enforceable pursuant to California Code of Civil Procedure sections 128(4) and 664.6.

5.2 Should Geffen violate any term set by the Agreement, Geffen shall be liable for a penalty in the amount of five hundred dollars (\$500.00) for each day Geffen is in violation. Before any such penalty is imposed, the Coastal Commission shall give Geffen ten (10) days written notice (by certified mail, return receipt requested) of the Coastal Commission's intent to enforce this penalty provision. If at the end of such ten (10) days Geffen is still in violation of the Agreement, the Coastal Commission may enforce this penalty provision for the entire period of noncompliance and regardless of whether Geffen has subsequently complied. Geffen shall pay the Coastal Commission such penalty within seven (7) days of receipt of the Coastal Commission's written notice (by certified mail, return receipt requested) to enforce this penalty provision. Payment of the penalty shall be made in the manner directed by the Coastal Commission and shall be computed from the first day Geffen stood in violation of the Agreement. Payment of such penalty shall not relieve Geffen of his duties under the Agreement. Geffen may seek an extension of any deadline and the Coastal Commission's Executive Director may grant the extension for good cause, in which case Geffen would not be liable for a penalty for violation of any such extended deadline.

6. NO WAIVER OF CLAIMS IF AGREEMENT TERMINATES:

In the event this Agreement terminates pursuant to Section 3.4 or Section 3.5, no provision of this Agreement or any documents related thereto ("Settlement Documents") shall be admissible or referenced in any administrative or judicial proceeding, nor shall any provision of the Settlement Documents or the after-the-fact permit application be deemed to be an admission of fact by any party or a relinquishment of any claim, cause of action or defense a party may be entitled to assert against any other party. Without limiting the generality of the foregoing, it is expressly agreed among the parties that, in the event the Agreement terminates, no provision of the Settlement Documents or the after-the-fact permit application shall be deemed to be an admission of fact or relinquishment of a claim, cause of action or defense related to the following claims that Geffen has or might assert: (i) a claim that the 2002 Acceptances are void and unenforceable; (ii) a claim that no Coastal Development Permit or other permit is required for one or more of the improvements; (iii) a claim that permits previously issued for existing improvements on the Property were validly issued and unlawfully revoked.

7. WAIVER OF THE BENEFITS OF CIVIL CODE SECTION 1542:

Having been fully apprised of the nature and effect of the provisions of section 1542 of the California Civil Code, the parties waive all rights which they may have against the other, both known and unknown with regard to the subject matter of this Agreement, which might otherwise exist by virtue of the provisions of Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

8. REPRESENTATIONS:

All parties to this Agreement represent and warrant that they have been afforded adequate opportunity to and have in fact reviewed the contents of this Agreement with counsel of their own choosing and accept the terms and conditions hereof based upon such advice of counsel.

9. REMEDIES FOR BREACH OF AGREEMENT:

Should any party to this Agreement violate any term or condition herein, the non-breaching party shall retain all rights and remedies available under the law including, but not limited to, the Coastal Act, remedies arising under contract law, or relief pursuant to paragraph 5 of this Agreement. The breaching party shall retain the right to raise all applicable defenses in response to any claim brought by the non-breaching party.

10. INTERPRETATION:

All parties acknowledge and agree that this Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

11. MERGER AND INTEGRATION:

This Agreement constitutes the entire agreement of the parties pertaining to the dispute which gave rise to the filing of the Main Action, the Coastal Commission Cross-Action and the Geffen Cross-Action and it supersedes all prior or contemporaneous understandings, representations, warranties and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. This

Agreement is entire in and of itself and may not be modified or amended except by an instrument in writing signed by all the parties. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement. The parties hereto further intend and agree that no extrinsic evidence whatsoever may be introduced in any judicial proceeding or quasi-judicial proceeding, if any, in connection with the enforcement or interpretation of this Agreement.

12 . EXECUTION IN COUNTERPARTS:

In order to more expeditiously implement the compromise and settlement terms set forth herein, the parties to this Agreement agree that the Agreement may be executed in two or more counterparts as if all parties signed one document and each executed counterpart shall be regarded as if it is an original document. The original executed counterparts shall be kept in the custody of the California Department of Justice. Execution may be by facsimile copy.

13 . WARRANTY OF NON-ASSIGNMENT:

The parties warrant that they have not assigned or transferred, nor will they in the future attempt to assign or transfer, any claim for relief or cause of action released herein.

14 . BINDING ON SUCCESSORS-IN-INTEREST:

This Agreement is binding upon the parties, and their successors-in-interest, transferees and assignees. Geffen shall provide notice to all successors-in-interest of any remaining obligations under this Agreement.

15 . SUBMITTED MATERIALS:

A copy of all materials submitted by Geffen pursuant to this Agreement (including copies of all checks, permit plans and other submittals), shall be sent to the Coastal Commission at the following address: California Coastal Commission, Attention: Pat Veasart, 89 South California St., Suite 200 Ventura, CA 93001-2801; Facsimile: (805) 641-1732.

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SETTLEMENT AGREEMENT AND
MUTUAL RELEASE
PAGE 8

IN WITNESS WHEREFORE the parties have caused this Agreement to
be executed.

THE PARTIES:Date: January 23, 2006

ACCESS FOR ALL



Steve Hoyer
Director

Date: _____

CALIFORNIA COASTAL COMMISSION and
PETER DOUGLAS_____
Peter Douglas
Executive Director

Date: _____

STATE COASTAL CONSERVANCY and
SAM SCHUCHAT_____
Sam Schuchat
Executive Director

Date: _____

DAVID GEFFEN

David Geffen

(Continued...)

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PAGE 8

IN WITNESS WHEREFORE the parties have caused this Agreement to
be executed.

THE PARTIES:

Date: _____

ACCESS FOR ALL

Steve Hoye
Director

Date: 1/24/06

CALIFORNIA COASTAL COMMISSION and
PETER DOUGLAS

Stan Hirsch Chief Deputy for

Peter Douglas
Executive Director

Date: _____

STATE COASTAL CONSERVANCY and
SAM SCHUCHAT

Sam Schuchat
Executive Director

Date: _____

DAVID GEFFEN

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(Continued...)

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Date: _____

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PETER DOUGLAS

Peter Douglas
Executive Director

Date: 1/20/06

STATE COASTAL CONSERVANCY and
SAM SCHUCHAT



Sam Schuchat
Executive Director

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PETER DOUGLAS

Peter Douglas
Executive Director

Date: _____

STATE COASTAL CONSERVANCY and
SAM SCHUCHAT

Sam Schuchat
Executive Director

Date: 1/20/06

DAVID GEFFEN

David Geffen

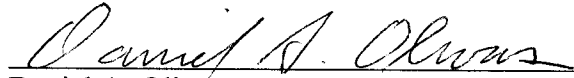
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Exhibit 3: Settlement Agreement and Mutual Release
SETTLEMENT AGREEMENT AND
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PAGE 9

APPROVED AS TO FORM:

Date: 1/23/06

ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA



Daniel A. Olivas
Deputy Attorney General
Attorneys for California Coastal Commission,
State Coastal Conservancy, Peter Douglas
and Sam Schuchat

Date: _____

JEFFREY BERNSTEIN, ESQ.

Jeffrey Bernstein, Esq.
Attorney for Access for All

Date: _____

ERIC BERG, ESQ.
HATCH & PARENT

Eric Berg, Esq.
Attorney for David Geffen

Exhibit 3: Settlement Agreement and Mutual Release

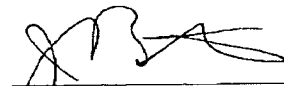
SETTLEMENT AGREEMENT AND
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PAGE 9APPROVED AS TO FORM:

Date: _____

ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA

Daniel A. Olivas
Deputy Attorney General
Attorneys for California Coastal Commission,
State Coastal Conservancy, Peter Douglas
and Sam SchuchatDate: 1/23/06

JEFFREY BERNSTEIN, ESQ.



Jeffrey Bernstein, Esq.
Attorney for Access for All

Date: _____

ERIC BERG, ESQ.
HATCH & PARENT

Eric Berg, Esq.
Attorney for David Geffen

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OF CALIFORNIA

Daniel A. Olivas
Deputy Attorney General
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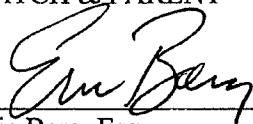
Date: _____

JEFFREY BERNSTEIN, ESQ.

Jeffrey Bernstein, Esq.
Attorney for Access for All

Date: 1/24/06

ERIC BERG, ESQ.
HATCH & PARENT



Eric Berg, Esq.
Attorney for David Geffen

EXHIBIT “A” TO SETTLEMENT

Exhibit 3: Settlement Agreement and Mutual Release

Jul-19-05 01:07pm From-
Jul-18-05 08:44am From: City of Malibu Doc 003

T-933 P 003/005 F-455



City of Malibu

23815 Stuart Ranch Rd. - Malibu, California • 90265-4816
(310) 456-2489 • fax (310) 456-7650

July 19, 2005

Lynn Heacox
The Land & Water Company
18822 Beach Boulevard, Suite 209
Huntington Beach, CA 92648

Reference: OC No. 04-040
22126 Pacific Coast Highway
APN 4451-006-032

Dear Mr. Heacox:

On March 25, 2004, the application listed above was submitted to the City of Malibu Planning Division for processing. The proposal was for the construction of a six-foot high wooden fence with wooden posts extending into the sand on the side yard property line of the subject property. On May 12, 2005, you provided "as-built" plans showing that the fence had actually been lengthened and that a gate had been added. It has come to the City's attention, (and verified by a site visit) that the scope of work on the site far exceeds a wooden fence and gate and that the actual "improvements" at the site consist of the following:

- A concrete pad approximately one foot thick, nine feet wide and 70 feet long has been installed without benefit of permit.
- Six-foot high wooden fence constructed on the side yard property line but with a permanent concrete foundation.
- A six-foot high wooden gate across the Access for All easement.
- An eight-foot by 12-foot, approximately 8 feet in height mobile trailer has been installed in a Caltrans easement and converted to a permanent structure without benefit of permit.
- A six-foot high wall extending approximately 57 feet seaward from the unpermitted structure has been constructed without benefit of permit. This has created a 500 square-foot storage yard without benefit of permit.
- Four exhaust hoods and associated mechanical work has been constructed and installed in the concrete slab adjacent to the residence without benefit of permit.

Exhibit 3: Settlement Agreement and Mutual Release

Jul-19-05 01:07pm From:
Jul-19-05 08:44am

T-933 P.004/005 F-455

July 19, 2005

Lynn Heacox
The Land & Water Company
OC No. 04-040

As demonstrated, the scope of the work far exceeds what was approved. In addition, the approval for the construction of the gate was granted in error as the property is subject to easements (which were not identified on submitted plans) and construction within an easement requires written consent from all easement holders.

The City rescinds approval of OC No. 04-040 and requires the property owner to apply for a Coastal Development Permit for all the unpermitted site improvements.

Attached please find a Notice of Intent to Record a Notice of Violation. This Notice of Intent provides the required 45 days notice that the City of Malibu will file a Notice of Violation against title to the subject property with respect to the Building, Municipal Code and/or Coastal violations that exist on the subject property.

If you have any questions regarding this matter, please contact me at (310) 456-2486 ext. 233 or by email at sedmondson@ci.malibu.ca.us.

Sincerely,


Stefanie Edmondson
Associate Planner

enc: Notice of Intent

cc: City Manager
City Attorney
Environmental and Community Development Director
Planning Division Manager
Permit Services Manager
Environmental & Building and Safety Manager
Code Enforcement Officer
California Coastal Commission

Exhibit 3: Settlement Agreement and Mutual Release

Jul-19-05 01:08pm From-
Jul-19-05 06:44am

T-933 P.005/005 F-455



City of Malibu

23815 Stuart Ranch Road • Malibu, California • 90265-4861
(310) 456-2489 • fax (310) 456-3356

Building Safety Department, Victor Peterson, Building Official

NOTICE OF INTENT TO RECORD A NOTICE OF VIOLATION

Re: The property located at 22126 Pacific Coast Highway

The following violations of the Malibu Building Code (MBC) and/or the Malibu Municipal Code (MMC) have been identified in connection with the above parcel and/or structure(s) thereon:

- ☒ MBC §106.4.1: Failure to file an application for permit and submit plans, specifications, calculations and other data to the Department of Building Safety to determine conformity with the requirements of the MBC.
- ☒ MBC §106.1, 107.1: Failure to obtain required permits and pay necessary fees prior to commencement of construction.
- ☒ MBC §106.2: Own, use or maintain a structure for all or part of which permits have not been obtained.
- ☒ MMC §17.62.020 Development and/or Intensification of use without required permits or approvals.
- ☒ MBC §108.1 Failure to have work inspected to assure compliance with requirements of the MBC.
- ☐ MBC §109.1 Unlawful completion, use and/or occupancy of a building
- ☐ MBC §§7003.1, 7003.2 Failure to obtain permits prior to grading; own, use or maintain graded property with unpermitted grading
- ☐ Other: CA Plumbing Code 101.4.1.2 Maintenance. The plumbing and drainage system of any premises shall be maintained in a sanitary and safe operating condition.

This office intends to seek compliance with the law through legal process, including recording a Notice of Violation against the above property with the County Recorder. Pursuant to provisions of Section 103.4.3 of the Malibu Building Code, a NOTICE OF VIOLATION WILL BE RECORDED on or after 09/01/05 unless the aforementioned violations have been corrected or removed by that date and other applicable requirements, if any, have been satisfied.

Victor Peterson
Environmental and Community Development Director

7/19/05
Date